

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Cruz et al

Confirmation No. 3320

Application No.: 10/035,250

Group Art Unit: 3691

Filing Date: 01/04/2002

Examiner: Havan

For: System, Method and Apparatus for Monitoring
and Execution of Buy and Sell Orders

Attorney Docket No.: 105506-04100

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Attached, please find a Notice of Appeal in the above-identified patent application.

This Notice of Appeal is being filed as a precautionary measure to maintain the pendency of this application for the following reason:

The Final Office Action mailed on April 30, 2007 was erroneously filed in the case and orally withdrawn by the Examiner and her Primary at a May 3, 2007 interview and orally indicated by the Examiner and the Primary several times since. The inappropriateness of the Final Office Action in view of the previously scheduled interview was addressed in Applicant's May 15, 2007 Supplemental Response. Despite Applicant's repeated requests over the past six months for a withdrawal of the Action and finality, no such correspondence has been received. Numerous recent attempts to secure allowance failed to result in an agreement, and no withdrawal of the Action or finality was indicated in the official record as of Tuesday, October 30, 2007. Since October 30, 2007 is the end of the 6-month statutory period of the flawed Office Action, Applicant is unfortunately obliged to file the attached Notice of Appeal.

In view of the situation in this case and unclear signals from the Examiner as to withdrawal of the Action, as well as indications on allowability, Applicant desires to either appeal the case now, as per this request, or have the inappropriately-issued Action withdrawn

and a new, non-final action be forwarded to Applicant at the earliest time in view of the extended pendency.

Applicant respectfully submits that this "error" is the fault of the Office and no fee is due for filing this document. Nevertheless, in view of the situation the Examiner has placed Applicant, Applicant authorizes the payment of fees necessary to preserve and move the instant case further, including payment of any extension fees, which are not actually due. Necessary fees may be charged to Deposit Account No. 50-1814.

Applicant respectfully requests withdrawal of the Office Action of April 30, 2007 as expeditiously as possible and, in any event, before the appeal brief is due.

If there are any questions, please do not hesitate to contact the undersigned, who is glad to further explain the skein of events leading up to this plea for relief.

Respectfully submitted,

October 30, 2007

Date



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